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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/867,223
Filing Date: May 29, 2001
Appellant(s): BARSADÉ ET AL.

Aaron S. Kamlay
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 26, 2007 appealing from the Office action mailed February 27, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,011,537	SLOTZNICK	1-2000
6,609,146	SLOTZNICK	8-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slotznick (US 6,011,537) (hereinafter "537") and further in view of 6,609,146 (US Slotznick) (hereinafter "146").

Regarding claim 1, Slotznick (537) teaches requesting a new network data stream serving up to a second network browser session an advertisement data stream previously stored in a memory of the user computer; downloading the requested new data stream; wherein is served up while the new data stream is being downloaded, the advertisement data stream was downloaded on the memory prior to the step of requesting a new data stream and the first and second browser sessions are the same session or different session (see fig. 7, col. 20 line 32 to col. 21 line 64, col. 22 lines 37-46, col. 24 lines to col. 25 line 7, col. 25 line 40 to col. 26 line 25, col. 29 lines 15-67, col. 35 line 45 to col. 36 line 67).). Slotznick (537) does not explicitly teach downloading to the user computer a displayable status indicator of the concurrent downloading activity of the new network data stream, it is taught in Slotznick (146). Slotznick (146) teaches programs posting estimated processing times (particularly for downloads which can take hours). It would have been obvious to one of the ordinary skill in the art at the time of the invention to include

such indication, for the intended use of informing the user about the download time (see col. 4 lines 20-28).

Regarding claims 2-10, Slotznick (537) teaches storing the advertisement data stream in the memory of the user computer while waiting for a previous network data stream to download or while a previous data stream was displayed in the browser session, wherein the first and second sessions are the same or different; browser session is a multi-frame window and the advertisement data stream together comprise at least a major portion of the window (see fig. 4-6 and fig. 17, col. 22 lines 31-67, col. 23 lines 1-54, col. 24 lines 11-49, col. 25 line 8 to col. 28 line 24).

Regarding claims 11-16, Slotznick (537) teaches requesting from a server a second advertisement; and storing the advertisement in the memory and deleting (subsequently requested primary information the first advertisement; software that requests the second advertisement; activating one or more links in the advertisement, etc. (see fig. 7, col. 11 lines 7-37, col. 14 line 18 to col. 15 line 36, col. 16 lines 29-62).

Regarding claim 17, Slotznick (537) teaches plural network servers, at least a first server includes plural advertisement data stream stored in a first memory; and at least a second server of which includes plural network data stream in a second memory; a display component, a browser program and an integrated circuit, the browser program and central processing unit can process BA data streams and network data stream for display and the browser program of a first user computer serves up the first BA data stream to a window for display as a first advertisement during the approximate period of time that occurs between when the first user computer requests a second network data stream from the secondary server and the second network data stream is

completely downloaded onto the first user computer (see fig. 3-9, col. 20 line 32 to col. 21 line 64, col. 22 lines 37-46, col. 24 lines to col. 25 line 7, col. 25 line 40 to col. 26 line 25, col. 29 lines 15-67, col. 35 line 45 to col. 36 line 67). Slotznick (537) does not explicitly teach downloading to the user computer a displayable status indicator of the concurrent downloading activity of the new network data stream, it is taught in Slotznick (146). Slotznick (146) teaches programs posting estimated processing times (particularly for downloads which can take hours). It would have been obvious to one of the ordinary skill in the art at the time of the invention to include such indication, for the intended use of informing the user about the download time (see col. 4 lines 20-28).

Regarding claims 18-23, Slotznick (537) teaches the first BA data stream is replaced with a second BA data stream obtained from the first server after the second data stream has been completely downloaded or while the second data stream is being downloaded (see fig. 7); wherein at least one of the data stream comprises of embedded code identifying a specific BA data stream to be downloaded (see col. 31 line 59 to col. 32 line 20); the browser displaying a single window or at least two windows display the first advertisement and the data stream (see fig. 4-6, 10A and 10B).). Slotznick (537) does not explicitly teach downloading to the user computer a displayable status indicator of the concurrent downloading activity of the new network data stream, it is taught in Slotznick (146). Slotznick (146) teaches programs posting estimated processing times (particularly for downloads which can take hours). It would have been obvious to one of the ordinary skill in the art at the time of the invention to include such indication, for the intended use of informing the user about the download time (see col. 4 lines 20-28).

Regarding claim 24, Slotznick (537) teaches displaying in the window during the approximate period of time beginning about when user computer requests a first network data stream from a network server and ending about when the first network data stream is downloaded on the user computer and is ready for viewing as a first network data stream in the same or different window of the browser and created from the advertisement data stream previously stored in the memory of the user computer the advertisement data stream having been obtained from the server prior to the point of time in which the user computer requested the data stream; wherein the advertisement portion is viewable, audible or a combination thereof (see fig. 7, col. 12 lines 29-53 col. 20 line 32 to col. 21 line 64, col. 22 lines 37-46, col. 24 lines to col. 25 line 7, col. 25 line 40 to col. 26 line 25, col. 29 lines 15-67, col. 35 line 45 to col. 36 line 67).

Regarding claims 25-30, Slotznick (537) teaches the advertisement comprising a major portion of the window; the advertisement and the data stream in the same window; the data stream comprising embedded code requesting a BA data stream (see col. 31 line 59 to col. 32 line 20); the data stream selected from group consisting of html file, text, graph, etc (see fig. 4-6, 10A and 10B, col. 22 lines 8-17, col. 24 lines 10-19, col. 31 lines 59-67).

Regarding claims 31-33, 41 and 42, Slotznick (537) teaches a servers having a plurality of advertisement (BA) data streams; a server including a data stream wherein at least one data stream includes BA activation code; submitting requests from the use computer to the severs, network data stream that includes activation code, or optionally include the code or which does not include the code (see fig. 12 and col. 29 lines 15-43) and submitting a request for a first BA data stream initiated by the code; downloading the data stream; downloading the BA data stream and stored in a memory (see col. 29 lines 15-43, col. 31 line 19 to col. 32 line 14, col. 33 lines 4-

22, col. 36 lines 1-9); wherein the data stream is displayed in a first window; wherein the first and second window (display of the BA data stream) is the same (see col. 36 line 10 to col. 38 lines 37, col. 40 line 50 to col. 41 line 9, see also fig. 4-6, 10-13 and 17).). Slotznick (537) does not explicitly teach downloading to the user computer a displayable status indicator of the concurrent downloading activity of the new network data stream, it is taught in Slotznick (146). Slotznick (146) teaches programs posting estimated processing times (particularly for downloads which can take hours). It would have been obvious to one of the ordinary skill in the art at the time of the invention to include such indication, for the intended use of informing the user about the download time (see col. 4 lines 20-28).

Regarding claims 34-37, Slotznick (537) teaches the first and second windows being the same or different and the first window remains open and the second window is closed; stocked, tiled etc. (see col. 14 lines 1-37, col. 15 lines 1-47, col. 24 lines 10-49, col. 36 line 10 to col. 38 lines 37, col. 40 line 50 to col. 41 line 9, see also fig. 4-6, 10-13).

Regarding claim 38, Slotznick (537) teaches the network data stream is superior to the content of the BA (see col. 26 line 39 to col. 27 line 18). Slotznick teaches priority given to the primary information to be displayed.

Regarding claim 39, Slotznick (537) teaches at least one use computer comprises of a second BA data stream prior to submitting the request for a first network data stream (see col. 25 line 39 to col. 26 line 18).

(10) Response to Argument

Regarding claim 1, Appellant argues that the passage of Slotznick '146 merely indicates that some programs provide an estimate of processing times and there is no suggestion that this

estimated processing time is ever displayed in association with an advertisement. Appellant asserts that Slotznick '146 provides specific examples of what a user may select for display during processing by a program, such as a schedule or a full-length movie. *See* col. 4, lines 20-28, but notably, there is no mention of displaying an advertisement during this processing time. Appellant further asserts that a general statement that estimated processing time of a download can be displayed fails to suggest serving up an advertisement in association with a displayable status indicator of concurrent downloading activity as required by the claims.

Examiner would like to point out that in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *See In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Slotznick (537) teaches advertisement served up while the new network data stream is being downloaded to the user computer, however failed to teach displayable status indicator of the concurrent downloading activity of the new network data stream. The only feature missing from Slotznick (537) is the status indicator of the concurrent downloading activity of the data stream, but this feature is taught in Slotznick (146). Since Slotznick (537) displays advertisement while the data stream is being served, in combination with Slotznick (146) would display the indicator that is displayed during the download. Therefore, Slotznick (537) in combination with Slotznick (146) would serve up the advertisement while the data stream is being downloaded and would also display the displayable status indicator.

Regarding claims 31, Appellant argues that it isn't clear specifically which items in the cited portions the Examiner believes describe a BA activation code. Appellant asserts that the

Examiner has not met the required burden to show how the Slotznick '537 discloses the features recited in the claims, or how one of skill in the art could adapt or modify Slotznick '537 to achieve the claimed features. Appellant further argues that the Final Rejection therefore fails to present a *prima facie* case of obviousness, and the rejection of claims 31-42 should be reversed. Slotznick teaches as follows:

The term "page" refers to a body of data that is accessed and downloaded in a generally continuous process from a memory or a remote source. The term is frequently used to refer to the body of data downloaded at one time over the Internet from a remote server. A page may contain more information than can be displayed at one time on the screen of the device. A page may contain a number of separate and/or linked files. A page may contain both primary and secondary data. The data contained in a page may take any form including, but not limited to, text, images (still, moving, animated, etc.), film or other animated images (including "loops" which replay the animated sequence repeatedly), audio clips, charts, spread sheets, databases, wallpaper (tiled, full-screen, static, moving, etc.), screen-savers, windows, OLE objects (either linked or embedded), tables, frames, software (in any form, language or code), programs, scripts, applications or applets, data addresses, any data in encoded or compressed form, etc., whether hidden or displayed. (col. 8 line 44 to col. 9 line 53).

In this document, the term "primary data" refers to the virtual page.TM. that is automatically displayed (and first displayed) when a page is downloaded by the apparatus. The term "secondary data" refers to the data contained in all other information and all other virtual pages.TM. in a page (i.e. all data in a page other than the primary data) which is downloaded and stored in memory. (col. 9 line 66 to col. 10 line 5).

The secondary information may be information content which is not explicitly requested by a user, such as an advertisement or promotional material (e.g., banner ads on the Internet) or entertainment material. Alternatively, the secondary information may be information content explicitly requested by a user, but which the user desires to see only during user wait periods and in a preview mode while viewing primary information or upon direct request. This type of secondary information may be educational or training material, entertainment material, or the like. The secondary information may also be a combination of unrequested and requested material. The filter discussed above may be used to manage secondary information so that the user has partial but not full control over which secondary information is displayed. (Col. 24 lines 35-49). In col. 29, it is disclosed that the websites are preprogrammed to insert secondary information into a web page of primary information. As indicated above the secondary information is information that is contained in the primary information (see col. 9 line 66 to col. 10 line 5). (See also col. 25 lines 1-18) where Slotznick teach that an example of the present invention wherein the requested primary information consists of a web page of text and one

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image, and the secondary information consists of one image. In this example, the text is transmitted first, along with data to generate blank boxes for the primary and secondary information images. Next, the primary information image is transmitted and replaces the blank box held for the primary information image. Lastly, the secondary information image is transmitted and replaces the blank box held for the secondary information image.

Therefore, Slotznick teaches wherein the primary information includes code embedded in the page which provides a request for specific secondary information (Banner advertisement BA) which is the same as Appellant's specification disclosure.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Yehdega Retta/

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